

GENE A. WILSON

101 Madison Street, P.O. Box 702, Louisa, KY 41230
(606) 638-9601 • Fax (606) 638-1041

October 5, 2006

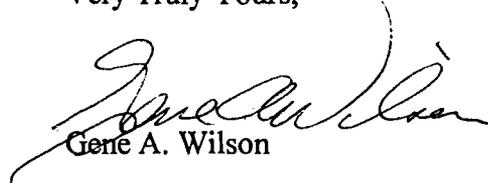
Mr. Lynn Dangerfield
United States Environmental Protection Agency
Region 4
Atlanta Federal Center
61 Forsythe Street, S. W.
Atlanta, Georgia 30303-8960

RE: Freedom of Information Act (FOIA)
5 U.S.C. 552, Request #: 04-RIN-00642-06

Dear Mr. Dangerfield:

Pursuant to our telephone conversation today, please accept this as notice that I wish to inspect my entire file on Thursday, October 19 and Friday, October 20, 2006, and I would appreciate your faxing me the directions to your office at 606-638-1041.

Very Truly Yours,


Gene A. Wilson

GAW:pmc

Cc: Hon. Susan B. Schub
~~████████████████████~~
Hon. Zylpha Pryor

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EPA REGION IV
2006 OCT 10 PM 4:12
HEARING CLERK

GENE A. WILSON

101 Madison Street, P.O. Box 702, Louisa, KY 41230
(606) 638-9601 • Fax (606) 638-1041

October 5, 2006

Mr. Nicholas N. Owens
U.S. Small Business Administration
Washington, D.C. 20416

Dear Mr. Owens:

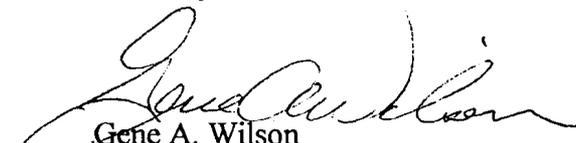
On October 3, 2006 I received the enclosed Order from Ms. Susan B. Schub, Regional Judicial Officer for E.P.A. stating your office must file a Notice of Appearance on my behalf to receive directly pleading and orders from her court.

It appears there are some communication failures; therefore, I am forwarding to the Regional Hearing Clerk, the Regional Judicial Officer, and E.P.A.'s attorney, the Director, Mr. Walker B. Smith's, Response to your letter dated August 25, 2006 and my reply of September 25, 2006.

Your appearance on my behalf before Mr. Smith is not sufficient notice in the Court records.

Please file necessary notice so that all correspondences is received by your office.

Sincerely,



Gene A. Wilson

GAW:pmc

Cc: Hon. Susan B. Schub
~~XXXXXXXXXXXX~~
Hon. Zylpha Pryor

GENE A. WILSON

101 Madison Street, P.O. Box 702, Louisa, KY 41230
(606) 638-9601 • Fax (606) 638-1041

September 25, 2006

Mr. Nicholas N. Owens
U.S. Small Business Administration
Washington, D.C. 20416

Dear Mr. Owens:

I want to thank you for your letter of September 12, 2006 with the enclosure of Mr. Walker Smith's response to your inquires of E.P.A.'s position against me.

If you take Mr. Smith's statement as factual, I appear to be a polluter with complete disregard to a potential drinking water source. E.P.A.'s position is false and it is completely disregarding my letters to the agency.

The permit was not properly issued and my many years of attempting to have it modified fell on deaf ears. Mr. Smith admits on his first page in his letter the injection well was designed to inject brine water in order to force oil to the surrounding oil wells. There were no surrounding oil wells and I could never get E.P.A. to modify the permit to allow other producers to inject their brine and that is why it was never put into service.

Mr. Smith on page 2 of his letter states an unplugged well is a potential conduit for contaminants. I repeatedly advised E.P.A. the proposed injection well was never completed because of the wrong permit was issued; that it was cemented in and the pipe was never perforated for brine to flow into the underground strata and at no time was any fluid ever placed in the well. This fact was continuously ignored by E.P.A. for ten (10) years. Since there was no injection no annual monitoring reports were ever submitted and E.P.A. waited fourteen (14) years to inspect my property where the well was located.

E.P.A. waited fifteen (15) years to issue me a Notice of Violation (N.O.V.) and never provided an opportunity to show cause as Mr. Smith alleged in his letter to your agency. The only negotiations I recall was pay Nine Thousand Plus Dollars (\$9,000.00+) or a complaint will be issued against you.

Mr. Smith states in his letter that "contrary to his assertions, Mr. Wilson did not contact E.P.A. to reschedule the test". I made no assertion. E.P.A. was to notify me a new date since I did not know the inspectors schedule or who he might be. There was local rumor that E.P.A. fired its local representative.

Mr. Nicholas N. Owens
September 25, 2006
Page 2

Except for the M.I.T. Test in 1993 no annual reporting was ever made since the well was never put into service and notice of this fact had been made by me to E.P.A. over the years. If I had not been corresponding with E.P.A., why did it wait fourteen (14) years to make an on sight inspection as indicated in page 2 of Mr. Smith's letter.

Since I was not having any luck in ten (10) years in having my permit modified, I did tell E.P.A. in 2000 I was going to plug the well and in 2005 permission was granted giving plugging instructions; however, even then E.P.A. could not provide an on sight inspector as required and I had to obtain E.P.A. permission to use a Kentucky inspector.

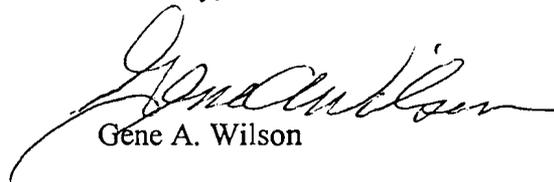
Mr. Smith has presented E.P.A. policy that does not exist in the field and it is regrettable I am having to defend myself against my government. The record will reflect I immediately responded to any and all notices or inquires from E.P.A. which was three (3) in fifteen (15) years.

In 2005 E.P.A. issued its Notice of Violation against me which was the same time I received the plugging instructions requested in 2000. The only settlement discussion was a demand by E.P.A. of Nine Thousand Plus Dollars (\$9,000.00+) or a complaint would be issued against me and I would need to travel to Atlanta for a hearing.

After I plugged the well, and thinking the issue was settled, approximately a year passed and I received E.P.A.'s Complaint. It appears the issue is not whether I injected brine and polluted the water but how much money E.P.A. can extract from me to resolve an issue that never occurred because of an improperly issued permit E.P.A. would not correct.

Your assistance has been very helpful since I now know E.P.A.'s true position. It is regrettable this issue may need to be resolved in Federal District Court before a jury of my peers.

Sincerely,



Gene A. Wilson

GAW:pmc

Cc: Mr. Walker B. Smith



U.S. SMALL BUSINESS ADMINISTRATION
WASHINGTON, D.C. 20416

RECEIVED SEP 20 2006

OFFICE OF THE NATIONAL OMBUDSMAN

September 12, 2006

Mr. Gene Wilson
Owner
Gene A. Wilson
101 Madison Street
Louisa, KY 41230

Dear Mr. Wilson:

As indicated in our recent correspondence dated July 27, 2006, your comment was sent to the U.S. Environmental Protection Agency (EPA) for a high-level review and response. EPA has reviewed your comment and provided a response. I have enclosed a copy of same with this letter.

Mr. Wilson, thank you for bringing your concerns to my attention.

If you have any questions or concerns, please contact our office by telephone at (202) 205-2417, fax at (202) 481-5719 or e-mail at Ombudsman@sba.gov.

Sincerely yours,

Nicholas N. Owens
National Ombudsman

Enclosures

The Mission of the Office of the National Ombudsman:
FOSTERING A MORE BUSINESS FRIENDLY REGULATORY ENFORCEMENT ENVIRONMENT.

409 3rd Street, SW, MC 2120, Washington, DC 20416-0005 Toll Free: (888) 734-3247 Fax: (202) 481-5719
Website: <http://www.sba.gov/ombudsman> E-mail: ombudsman@sba.gov



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

AUG 25 2006

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

Via Facsimile and Regular Mail

Nicholas N. Owens, National Ombudsman
Office of the National Ombudsman
U.S. Small Business Administration
409 3rd Street, SW, MC 2120
Washington, DC 20416-0005
Facsimile: 202-481-5719

Re: SBREFA Comment from Gene A. Wilson

Dear Mr. Owens:

I am responding to your July 27, 2006, letter forwarding the comment submitted to your office by Mr. Gene Wilson. This response fulfills our obligation under Section 222 of the Small Business Regulatory Enforcement Act (SBREFA).

Mr. Wilson's comment concerns an administrative complaint filed against him by the Environmental Protection Agency (EPA) for violating the Safe Drinking Water Act (SDWA) permit for his underground injection well. Before addressing the seven questions in your letter, I believe some background information would be helpful.

Background

The SDWA assures the safety of this country's drinking water sources by preventing direct contamination of identified water supplies and minimizing the risk that any potential drinking water sources could be contaminated. The Act explicitly places on injection well¹ owners/operators the burden of proving that their wells will not endanger drinking water sources. The underground injection control (UIC) regulations assure that these sources are not rendered unfit by underground injection of contaminants.

¹ These wells are used to inject substances underground for different purposes. Mr. Wilson's well was designed to inject brine water in order to force oil to the surface in connection with oil production activities. When properly constructed and maintained, underground injection wells are effective and environmentally safe.

As long as a well exists, the well operator must demonstrate to the state or to EPA that it will not fail in any way that can cause or affect the release of contaminated fluids. A well that is in regular use will immediately show a loss of pressure during injection if it lacks this mechanical integrity. Because lack of mechanical integrity is not as easily detected in unused wells, they must either be tested every two years or plugged. Any unplugged well is a potential conduit for contaminants to enter underground sources of drinking water (USDWs). Of course, an underground injection well may be plugged and abandoned by an owner/operator at any time.

Responsibility for ensuring that an existing, unplugged well maintains mechanical integrity begins and ends with its owner/operator. The owner/operator must not only test the well regularly, but must submit annual monitoring reports to the regulating agency that indicate whether or not the well is in use, and injection pressure, if any. In Kentucky, where Mr. Wilson's underground injection well is located, EPA inspects facilities, reviews monitoring reports and has primary enforcement responsibility for the UIC program.

If an owner/operator fails to timely demonstrate the mechanical integrity of a well or submit annual monitoring reports, EPA issues a notice of violation (NOV) to the owner/operator and provides an opportunity to show cause. This initiates a process that allows the owner/operator to discuss the alleged violation(s) with EPA. Usually, the owner/operator is willing to enter into a settlement with EPA. A typical settlement requires payment of a penalty and correction of the violation. Where a settlement cannot be achieved, EPA issues a complaint to the owner/operator and the matter is heard before an EPA Regional judicial officer.

In this case, Gene Wilson applied for a permit to operate an underground injection well located in Lawrence County, Kentucky. The permit was issued in 1990 and the first mechanical integrity test was performed in October 1993. In 1999, EPA notified Mr. Wilson in writing that his well was scheduled to be tested on January 21st. At that time, EPA was making special efforts to assist well owner/operators in becoming familiar with the UIC requirements. At Mr. Wilson's request, the test was rescheduled for April 26, 1999. According to Mr. Wilson, the EPA contractor hired to witness the testing did not show up and the test could not be conducted. Contrary to his assertions, Mr. Wilson did not contact EPA to reschedule the test.

By letter dated August 2, 2000, EPA requested that Mr. Wilson provide monitoring reports, a copy of the most recent mechanical integrity test, and other pertinent information. This letter served to remind Mr. Wilson again of his responsibilities as set forth in his permit and the underlying regulations. In an August 18, 2000, response letter to EPA, Mr. Wilson stated that he would plug the well as soon as a certain individual he would employ was available to do the job. Because EPA never received any documentation from Mr. Wilson showing the well had been plugged, nor did he submit any monitoring reports to certify the well's operational status, the Agency conducted a field inspection, on September 14, 2004. The inspector observed that the well was in a state of temporary abandonment: it appeared not to have been used for a period of time.

On February 9, 2005, EPA issued an NOV to Mr. Wilson for violating the requirements of his permit, the SDWA, and the UIC regulations. Several settlement discussions were held with Mr. Wilson during the ensuing months, but an agreement was not reached. On June 10, 2005, Mr. Wilson plugged the well and on May 16, 2006, EPA issued an administrative complaint against him seeking penalties for the period of non-compliance, which could be up to the statutory maximum. (To determine a penalty appropriate to the facts in a given UIC case, EPA applies factors set by statute.) The violations alleged included failure to demonstrate the mechanical integrity of or timely plug his well and failure to submit annual monitoring reports.

Why and how did you take the enforcement or compliance action(s)?

As described above, the enforcement action was taken after two efforts by EPA to bring Mr. Wilson into compliance with the UIC requirements. He was afforded ample time and opportunity to correct the violations. It was only after EPA issued him a Notice of Violation that Mr. Wilson complied with the law and plugged the well. The administrative complaint was based on Mr. Wilson's years of failure to comply with his permit and the UIC regulations.

Did you notify the small business about the enforcement or compliance action?

Yes. The NOV issued to Mr. Wilson on February 9, 2005, informed him that he was in violation of the UIC requirements and that the violation could subject him to an enforcement action.

If so, did you agency provide the business an opportunity to come into compliance?

Yes. Prior to the issuance of the NOV, EPA twice notified Mr. Wilson of the need to test the mechanical integrity of his well. In 2000, Mr. Wilson stated his intention to plug the well as soon as possible and EPA gave him ample time – five years – in which to do so. Mr. Wilson did not plug the well until June 2005, four months after EPA issued the NOV, when it was apparent that EPA would take enforcement action for his years of noncompliance.

Did you review the actions of the investigator/auditor/inspector/individual to ensure compliance with your agency's policies and procedures?

Yes. The inspections, NOV, Complaint, and all negotiations were conducted in accordance with current EPA policies and procedures.

**Were your agency's regional and program offices responsive to the small business?
If so, please cite some examples.**

Yes. Before taking any enforcement action, the EPA Regional program office made two attempts to bring Mr. Wilson into compliance. After issuing the NOV, Regional personnel engaged in discussions with Mr. Wilson, as often as he wished, in an effort to settle prior to issuing a complaint.

Was the small business informed of their right to contact the Office of the National Ombudsman at SBA?

Yes. EPA Region 4 routinely includes an information sheet entitled "U.S. EPA Small Business Resources" with any NOV issued for violations of the UIC regulations. Among other things, the sheet informs the small business of its right to contact the Office of the National Ombudsman at SBA. EPA issued an NOV to Mr. Wilson on February 9, 2005, and it stated that the small business information sheet was included. Mr. Wilson subsequently informed EPA that the sheet had not been included. A copy was faxed to him on March 4, 2005, and mailed to him on March 8, 2005. Thus, he was notified of his right to contact the Office of the National Ombudsman at SBA over a year before EPA commenced a formal enforcement action against him.

Did your agency consider any alternatives to enforcement action, such as waiving penalties or reducing fines?

Yes. As part of EPA's routine enforcement practice, we closely examine the facts in each case that may warrant a penalty reduction, such as a respondent's ability to pay. It should be noted that ordinarily a penalty waiver or reduction is not an alternative to an EPA enforcement action, but part of a settlement that may be reached.

EPA made efforts to settle with Mr. Wilson prior to issuing the complaint. However, because this is an ongoing enforcement matter, we are unable to discuss the substance of any settlement negotiations with a third party.

As a result of the issues raised by this small business concern, has your agency implemented any changes to address this situation in the future?

EPA has policies and procedures in place to assist small businesses in complying with the environmental laws that EPA enforces. As in Mr. Wilson's case, EPA's UIC permitting program first tries to alert small business to their responsibilities. Letters are frequently sent out to owner/operators reminding them of the requirements and affording them ample opportunity to come into compliance. When the Region's permitting program refers a case for enforcement, the enforcement program routinely issues an NOV, affording the owner/operator the opportunity to discuss the violations. Sometimes, on the basis of these discussions, no enforcement action is taken or it is decided that compliance alone should be required and not a penalty. The small business is always offered an opportunity to demonstrate its inability to pay the penalty. If the small business does not wish to submit tax returns or other evidence of its inability to pay the penalty, the Agency will entertain reasonable counteroffers. The Agency is not rigid in its application of this program and believes that its enforcement processes allow facilities that are operating in violation of the law to resolve these violations and come into compliance. The efforts of EPA Region 4 have, at all times throughout this matter, been in conformance with EPA policies and procedures.

I trust that this responds to your July 27, 2006, inquiry regarding the comment submitted by Gene Wilson of Louisa, Kentucky. EPA is pleased to work with SBA to respond to small business concerns. If you have any questions or concerns regarding this matter, please contact Melissa Marshall, Senior Counsel on my staff, at 202-564-7971.

Sincerely,


Walker B. Smith, Director
Office of Regulatory Enforcement

cc: Mark Pollins
Zylpha Pryor, Region 4
Melissa Marshall